

BEFORE THE REAL ESTATE APPELLATE TRIBUNAL AT
MUMBAI

APPEAL NO.006000000010489

M/s Hira Housing Construction
Company, Mumbai
Through its representative
Shri Sheshmani R. Pandey,
Age 59 years, Occupation Certificatec. Business,
Address : Hira Park, Hira Housing,
Vasundari Road, Manda-Titwala,
Tal. Kalyan, Dist. Thane.

... Appellant
(Org. Respondent)

Versus

1] Shri Arun Shantaram Hadap,
Age adult, Occupation Certificatec. Service,
R/at Room No.23, 3rd Floor,
Gangubai Apartment, Navasagar
Sangam SOccupation Certificateiety, Tisgaon Naka,
Kalyan (E) ,Dist. Thane.

... Respondent No.1
(Org. Complainant)

2] Maharashtra Real Estate Regulatory
Authority, Mumbai through
The Hon'ble Member & Adjudicating
Officer.

... Respondent No.2

Advocate Mr. Deepak R. Shah, for Appellant
Advocate Mr. Shashikant Kadam for Respondent No.1

Coram : **Indira Jain J, Chairperson**
Mr. S.M. Kolhe, Member(J)
Mr. S.S. Sandhu, Member(A)

Date : **14th June, 2019**

JUDGMENT (Per S. S. Sandhu, Member(A))

This appeal is directed against the order dated 22nd May, 2018 passed by Ld.Member and Adjudicating Officer, MahaRERA (for short 'the Authority') in Complaint No.CC0060000000012045 filed by the Respondent in this case.

2. The facts of this case are that the Respondent, who is an allottee, booked flat No.703 in 'B' Wing in the project namely 'Hira Housing Complex' executed by the Appellant at village Manda, Taluka Kalyan of Thane District. Admittedly, as per agreement between the parties, possession of booked flat was to be given on or before 30th June, 2016. However, when the Appellant failed to deliver the possession by the said date, the Respondent filed a Complaint to the Authority on 8th December, 2017 seeking withdrawal from the project and refund of the paid amounts with interest and compensation U/s 18 of the RERA, 2016.

3. The Appellant in his reply to the complaint on 22nd May, 2018 contested mainly the veracity of Respondent's claim of payments made by him. He also claimed non-payment of the required amount of Rs.2,74,360/- lacs by referring to the dishonouring of two cheques of Rs.1,54,360/- lacs and Rs.1.20 lacs tendered by the Respondent towards stamp duty/registration charges and water connection etc. respectively.

4. After considering submissions by the parties, the Authority came to the conclusion that the Appellant failed to handover the possession of the booked flat on the agreed date. The Authority therefore held the Respondent entitled to withdraw from the project under Sec.18 of the RER Act, 2016 and for refund of the amounts paid by the Respondent with interest at the rate of 10.05%. The Authority also awarded Rs.20,000/- as cost of the complaint to the Respondent. It is this order which is impugned in the present appeal.

5. Parties were heard for considering their rival claims for the purpose of adjudication.

6. In the appeal proceedings, the Appellant mainly contended that the Authority has erroneously concluded failure on the part of the Appellant to deliver the possession within prescribed period. The Ld. Counsel for the Appellant argued that the Promoter has already taken the completion certificate and had given several notices to the Respondent for taking possession by paying the balance charges/payments as per agreement dated 16th June, 2014. It was further contended that as per clause 10 of the said agreement, the Respondent had to pay Rs.1.20 lacs on 16th March, 2016 i.e. 90 days before completion of flat for ready possession. But the Respondent failed to pay the same as the cheque dated 23rd October, 2017 given by the Respondent for the said amount was dishonoured. Similarly, he reiterated that another cheque for payment of Rs.1.54 lacs also got dishonoured. Thus, it is the case of the Appellant that the flat was ready for possession and the Appellant was always ready to give the possession thereof subject

to the condition that the Respondent clears all the dues/charges as agreed. However, due to dishonoured cheques, since the Respondent defaulted on making necessary payments before the possession as mandated by the agreement, the possession of flat could not be handed over. He therefore submitted that the Respondent was not entitled for the reliefs erroneously granted to him in the impugned order and prayed for setting aside the same.

7. On the contrary, the Respondent averred that the Appellant/Promoter has falsely claimed that the flat was ready for possession. He referred to the facts stated in his complaint to highlight claim of the Appellant itself on MahaRERA website showing that 60% building construction work is completed and 40% of some of the works mentioned therein are incomplete. He also submitted that since no Occupation Certificate mandatory for possession is obtained till today, the possession cannot materialise. In view thereof, he contended that there is no obligation to comply with the terms prescribed in clause 10 of the agreement between the parties.

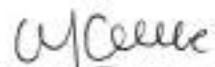
8. Having considered the submissions of the parties and documents on record, we find that in several hearings before the Authority, the Appellant never claimed that he has completed the project or has obtained the Occupation Certificate for the building for delivering possession of the flat. It is also seen that in his reply dated 22nd May, 2018 there is not even a whisper about Occupation Certificate or about the claim that the flat was ready for possession. In his reply he merely questioned the correctness of payments claimed to have been made by the Respondent in his

complaint and has made reference to non-payment of amounts as per the agreement on account of dishonoured cheques tendered by the Respondent. In his arguments also, during the appeal proceedings, there was no denial or rebuttal of the contentions of the Respondent that the building housing the flat purchased by the Respondent did not have the necessary Occupation Certificate for enabling delivery of possession.

9. As submitted hereinabove by the Respondent, he in his complaint before the Authority has mentioned several items of works which the Appellant himself has declared as incomplete on the MahaRERA website while registering in the project in the last part of the year 2017. The completion of these works is crucial for according status of completeness to the project to make the building possession-worthy for the allottees. These facts clearly belie truthfulness of the claim of the Appellant of completion of the project and its readiness for possession. Also, it may not be out of place to mention that, in the course of hearing, in response to a pertinent query from the Bench, the learned Counsel of Appellant admitted that no "Occupation Certificate" has so far been granted to the project. These facts clearly suggest that the booked flat is not ready for giving possession even till date. In such circumstances, it is unambiguously safe to conclude and hold that there is a delay in delivering the possession of the flat and this situation entitles Respondent to withdraw from the project and to claim consequential reliefs. Accordingly, grounds of Appeal are held to be without merits and untenable.

10. In above premise, we find no fault with the impugned order holding the Respondent entitled to withdraw from the project and consequently eligible for refund of the paid amounts along with interest/compensation as awarded by the Authority. In result, there is no need to interfere with the impugned order and we dismiss the appeal with no costs.


(S. S. Sandhu)


(S.M. Kolhe)


(Indira Jain J)